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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

[PORTLAND DIVISION]

**REGIONAL LOCAL UNION NOS. 846 and 847,
International Association of Bridge,
Structural, Ornamental and Reinforcing
Iron Workers, AFL-CIO, and
REGIONAL DISTRICT COUNCIL
WELFARE PLAN AND TRUST, f/k/a LOCAL
846 REBAR WELFARE TRUST, By and Through
Its Board of Trustees; and REGIONAL DISTRICT
COUNCIL RETIREMENT PLAN AND
TRUST, f/k/a REBAR RETIREMENT PLAN AND
TRUST, By and Through Its Board of Trustees;
and REGIONAL DISTRICT COUNCIL
TRAINING TRUST, f/k/a LOCAL 846 TRAINING
TRUST, By and Through its Board of Trustees;
and REGIONAL DISTRICT COUNCIL
VACATION TRUST FUND, f/k/a LOCAL 846
VACATION TRUST, By and Through Its Board**

Case No. 3:19-cv-00334_____

COMPLAINT

**(ACTION UNDER ERISA AND
LMRA TO COMPEL PAYMENT
OF AMOUNTS OWED TO
EMPLOYEE BENEFIT PLANS
AND UNION)**

COMPLAINT - 1

of Trustees,

Plaintiffs,

v.

MIDWEST REBAR SERVICES, LLC, a Nebraska
Corporation,

Defendant.

COMPLAINT

COME NOW Plaintiffs, by and through undersigned counsel, and for their Complaint against Defendant state as follows:

1. Plaintiff Regional Local Union Nos. 846 and 847, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL-CIO (“Local Unions”) are “employee organizations” within the meaning of § 3(4) of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1002(4), and are labor organizations within the meaning of Section 1(5) of the Labor-Management Relations Act of 1947 (“LMRA”), as amended, 29 U.S.C. § 151(5).

2. Plaintiff Regional District Council Welfare Plan and Trust, *f/k/a Local 846 Rebar Welfare Trust* (hereinafter “Welfare Trust”) is an employee benefit plan within the meaning of Sections 3(1) and (3), 502 and 515 of ERISA, 29 U.S.C. §§ 1002(1), (3), 1132 and 1145. The legal name of the Welfare Trust was amended by its board of trustees in 2008. In all respects, the Welfare Trust remains the same legal entity. The board of trustees are fiduciaries within the meaning of Section 3(21)(A) and 502 of ERISA, 29 U.S.C. §§ 1002(21)(A) and 1132, and are authorized to maintain this cause of action pursuant to Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), to

enforce the terms of an ERISA plan.

3. Plaintiff Regional District Council Retirement Plan and Trust, *f/k/a Rebar Retirement Plan and Trust* (hereinafter “Pension Trust”) is an employee benefit plan within the meaning of Sections 3(1) and (3), 502 and 515 of ERISA, 29 U.S.C. §§ 1002(1), (3), 1132 and 1145. The legal name of the Pension Trust was changed by an amendment adopted by its board of trustees in 2008. In all respects, the Pension Trust remains the same legal entity. The board of trustees are fiduciaries within the meaning of Section 3(21)(A) and 502 of ERISA, 29 U.S.C. §§ 1002(21)(A) and 1132, and are authorized to maintain this cause of action pursuant to Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), to enforce the terms of an ERISA plan.

4. Plaintiff Regional District Council Training Trust, *f/k/a Local 846 Training Trust* (hereinafter “Training Trust”) is an employee benefit plan within the meaning of Sections 3(1) and (3), 502 and 515 of ERISA, 29 U.S.C. §§ 1002(1), (3), 1132 and 1145. The legal name of the Training Trust was changed by an amendment adopted by its board of trustees in 2008. In all respects, the Training Trust remains the same legal entity. The board of trustees are fiduciaries within the meaning of Section 3(21)(A) and 502 of ERISA, 29 U.S.C. §§ 1002(21)(A) and 1132, and are authorized to maintain this cause of action pursuant to Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), to enforce the terms of an ERISA plan.

5. Plaintiff Regional District Council Vacation Trust Fund, *f/k/a Local 846 Vacation Trust* (hereinafter “Vacation Trust”) is an employee benefit plan within the meaning of Sections 3(1) and (3), 502 and 515 of ERISA, 29 U.S.C. §§ 1002(1), (3), 1132 and 1145. The legal name of the Vacation Trust was changed by an amendment adopted by its board of trustees in 2008. In all respects, the Vacation Trust remains the same legal entity. The board of trustees are fiduciaries within the meaning of Section 3(21)(A) and 502 of ERISA, 29 U.S.C. §§ 1002(21)(A) and 1132,

and are authorized to maintain this cause of action pursuant to Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), to enforce the terms of an ERISA plan.

6. Together, the Welfare Trust, Pension Trust, Training Trust, and Vacation Trust shall be referred to as the “Plaintiff Funds.” Together, the Local Unions and Plaintiff Funds shall be referred to as “Plaintiffs.”

7. Defendant is a Nebraska corporation.

8. Defendant is, was and at all relevant times has been an employer in an industry affecting commerce within the meaning of Sections 3(5), (11), (12) and 515 of ERISA, 29 U.S.C. §§ 1002(5), (11), (12) and 1145, and of §§ 2(2), (6) and (7) of the LMRA, 29 U.S.C. §§ 152(2), (6) and (7).

9. This Court has subject matter jurisdiction over the Plaintiff Funds’ and their trustees’ claims by virtue of ERISA Sections 502(a)(3) and 515, 29 U.S.C. §§ 1132(a)(3) and 1145, in that the trustees are fiduciaries who seek to enforce provisions of certain trust documents establishing the Plaintiff Funds, to which Defendant is bound and pursuant to which Defendant is obligated to contribute to the Plaintiff Funds, as further set forth herein.

10. This Court has subject matter jurisdiction over the Local Unions’ claims pursuant to LMRA § 301(a) and (c), 29 U.S.C. § 185(a) and (c), in that they seek to enforce Defendant’s obligations pursuant to a valid and binding collective bargaining agreement.

11. Jurisdiction and venue are proper pursuant to ERISA Section 502(e)(2), 29 U.S.C. § 1132(e)(2), in that the Plaintiff Funds are administered by The William C. Earhart Company, Inc. (hereinafter “Earhart”) in Portland, Oregon, within the territorial jurisdiction of this Court.

12. Jurisdiction and venue are proper in this Court pursuant to LMRA § 301(a),

29 U.S.C. § 185(a), in that Earhart processes the Local Unions' working assessments in Portland, Oregon, within the territorial jurisdiction of this Court.

13. At all times relevant to this Complaint, Defendant is, was and has been signatory to one or more collective bargaining agreements (the "Agreement") with the Local Unions. A true, accurate and correct copy of the Agreement is attached hereto as Exhibit 1.

14. Pursuant to the Agreement, Defendant recognizes the Local Unions as the exclusive collective bargaining representative of all craft work covered by the Agreement and employed by Defendant within the geographical areas further specified in the Agreement. *See*, Exhibit 1, Art. I.

15. Pursuant to the Agreement, Defendant agreed to the establishment of and to be bound by certain trusts establishing the Plaintiff Funds. *See*, Exhibit 1, Art. XVII, §§ 1-4.

16. The trust documents are incorporated into the Agreement as they existed at the date of the Agreement "and as they may be amended by the trustees from time to time during the term of this Agreement." Thus, the trust documents "apply to the signatory Employer." *See*, Exhibit 1, Art. XVII, § 9.

17. The Agreement requires Defendant to pay contributions at specified hourly rates for each hour worked by each employee covered by the Agreement. Such contributions are to be paid at the office of the Plaintiff Funds. *See*, Exhibit 1, Art. XVII, § 6.

18. The rates of contribution are subject to change, as provided in the Agreement. *See*, Exhibit 1, Art. XVII, §§ 6, 7.

19. The Agreement also requires Defendant to submit dues and working assessments via check-off and to forward them to the Local Unions.

20. Defendant is required to file reports of its hours and to pay contributions by the fifteenth day of each month for the previous month's work. *See*, Exhibit 1, Art. XVII, §§ 8, 9.

21. If Defendant fails to pay contributions by the fifteenth day of a particular month, Defendant is liable for interest in the amount of one and one-half percent (1-1/2%) per month on all unpaid balances, accounting fees, attorney's fees, auditing fees, and expert fees in the event of litigation to collect delinquent contributions. *See*, Exhibit 1, Art. XVII, § 8.

22. Pursuant to the trust documents and collection policy governing the Plaintiff Funds and ERISA § 502(g)(2)(C), 29 U.S.C. § 1132(g)(2)(C), Defendant is liable to the Plaintiff Funds for liquidated damages in the amount of twenty percent (20%) of any delinquency.

23. Defendant was audited for the period of January 1, 2014 to December 31, 2016. As a result, Defendant owes \$17,865.28 in audit fees.

24. Defendant has failed to pay the audit fees. As a result of Defendant's failure to pay the audit fees, the Plaintiffs have been harmed.

WHEREFORE, the Plaintiffs pray that the Court:

- a. Enter a judgment for \$17,865.28 in audit fees, as well as all amounts which may become due and owing after the filing of the Complaint;

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- b. Enter an order awarding Plaintiffs their attorneys' fees and costs; and
- c. Enter orders for such further relief as the Court deems proper under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on February 22, 2019, a copy of the foregoing was mailed, by certified mail, return receipt requested, to the Secretary of Labor, United States Department of Labor, P.O. Box 1914, Washington, D.C. 20013 and to the Secretary of Treasury, United States Treasury, 15th and Pennsylvania Avenue, Washington, D.C. 2022.

/s/ Michael A. Evans